



# DEBRA BOWEN

## CALIFORNIA SECRETARY OF STATE

### NEWS RELEASE

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Contact: Nicole Winger  
(916) 653-6575

## Did ES&S Sell Uncertified Voting Equipment To California Counties?

### *Secretary of State Bowen Sets Hearing to Investigate Company*

**SACRAMENTO** – Secretary of State Debra Bowen today announced she has set a public hearing for September 20, 2007, to examine whether Election Systems & Software, Inc. (ES&S) sold uncertified voting machines to as many as five California counties.

“ES&S sold nearly 1,000 voting machines in California without telling the counties that bought them that they had never been certified for use in this state,” said Secretary Bowen, the state’s chief elections officer. “Given that each machine costs about \$5,000, it appears ES&S has taken \$5 million out of the pockets of several California counties that were simply trying to follow the law and equip their polling places with certified voting machines.”

The ES&S AutoMARK Version 1.0, also known as Phase One or Model A100, is an electronic ballot-marking device that the Secretary of State certified for use in California in August 2005. According to information provided by the counties to the Secretary of State, 14 counties (Amador, Calaveras, Colusa, Contra Costa, Marin, Merced, Sacramento, San Francisco, San Luis Obispo, Santa Barbara, Siskiyou, Solano, Stanislaus and Tuolumne) use the AutoMARK to comply with the Help America Vote Act (HAVA) requirement to provide at least one machine in each polling place so voters with disabilities can cast ballots independently.

However, according to information obtained by Secretary Bowen, ES&S sold AutoMARK Version 1.1, also known as Phase Two or Model A200, to five of those counties (San Francisco, Colusa, Marin, Merced and Solano) in 2006. ES&S had never submitted Phase Two, a version that is substantially different from the state-certified AutoMARK Phase One, to the California Secretary of State for certification. Furthermore, ES&S delivered hundreds of AutoMARK Phase Two machines to California counties months before the model’s August 2006 federal certification.

“Not only did ES&S sell machines to California counties that weren’t state certified, it’s clear the machines weren’t even federally certified when the company delivered them to California,” Bowen continued. “While ES&S may not like California law, I expect the company to follow the law and not trample over it by selling uncertified voting equipment in this state.”

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Under California law, no voting system or part of a voting system can be used in the state until it has been certified by the Secretary of State. Vendors also are required to get the Secretary's approval of any changes to a certified voting system. If the Secretary of State determines a certified voting system has been modified without such approval, she can ask a court or an administrative law judge to impose any of a number of penalties. The Secretary of State is required to hold a public hearing – and give 30 days advance notice – before formally asking for penalties to be imposed on the vendor.

“If ES&S has broken the law and misled counties into buying nearly 1,000 uncertified machines, I intend to go after the company for the full \$9.72 million in penalties allowable by law, along with the original \$5 million the company took from counties' pockets,” concluded Bowen.

According to information ES&S provided to the Secretary of State, it sold 972 of its uncertified Phase Two machines to:

- |                               |              |
|-------------------------------|--------------|
| ▪ Colusa County               | 20 machines  |
| ▪ Marin County                | 130 machines |
| ▪ Merced County               | 104 machines |
| ▪ San Francisco City & County | 558 machines |
| ▪ Solano County               | 160 machines |

California law authorizes the Secretary of State to pursue the following penalties against a voting system manufacturer for making any unauthorized change in the hardware, software or firmware of a certified or conditionally certified system:

- Damages up to \$10,000 per violation, counting each voting machine as a separate violation. (This money would be evenly split between the Secretary of State and the affected county where the violation occurred);
- A refund of all money paid by a county to the voting system manufacturer, regardless of whether the voting system had been used in an election;
- Decertification of the voting system in question;
- Prohibition of the manufacturer from doing any elections-related business in the state for up to three years; and
- Any other remedial actions authorized by law to prevent “unjust enrichment of the offending party.”

The public hearing regarding ES&S will be held on September 20, 2007, at 10:00 a.m. in the auditorium of the Secretary of State's office in Sacramento. The hearing notice is at [http://www.sos.ca.gov/elections/voting\\_systems/ess\\_automark\\_public\\_hearing\\_notice\\_080907.pdf](http://www.sos.ca.gov/elections/voting_systems/ess_automark_public_hearing_notice_080907.pdf).